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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ASHLEY SCHWARTZ-EARP, Plaintiff, v. ADVANCED CALL CENTER TECHNOLOGIES, LLC, et al., Defendants.	Case No.: 15-CV-01582-MEJ **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, PARTIAL SUMMARY JUDGMENT** Hearing Date: March 17, 2016 Hearing Time: 10:00 a.m. Courtroom.: B [Notice of Motion, Separate Statement of Undisputed Material Facts, and Declarations of Marc Keller and Adrian T. Lambie filed concurrently]

Pursuant to Federal Rule of Civil Procedure 56 and Local Rule 7-2, Defendant ADVANCED CALL CENTER TECHNOLOGIES, LLC submits the following Memorandum of Points and Authorities in support of its concurrently-filed Motion for Summary Judgment or, in the alternative Partial Summary Judgment as to each claim for relief in the Complaint of Plaintiff ASHLEY SCHWARTZ-EARP.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This case arises from calls that Defendant ADVANCED CALL CENTER TECHNOLOGIES, LLC ("Defendant") placed to Plaintiff ASHLEY SCHWARTZ-EARP ("Plaintiff") over a 37-day period in an effort to collect a debt. Plaintiff's Complaint asserts four claims for relief: (1) violation of the Fair Debt Collection Practice Act ("FDCPA"); (2) violation of California's Rosenthal Act; (3) violation of the Telephone Consumer Protection Act ("TCPA"); and (4) invasion of privacy. As set forth below, undisputed facts show conclusively that Plaintiff's claims are without merit and Defendant is entitled to judgment as a matter of law. Therefore, Defendant respectfully requests summary judgment as to Plaintiff's entire Complaint or, in the alternative, partial summary judgment as to each claim for relief asserted therein.

II. UNDISPUTED MATERIAL FACTS

On or about February 3, 2014, Plaintiff applied in-store for a JCPenney-branded credit card, issued by Synchrony Financial ("Synchrony"). *Sep. Stmt.* at ¶ 1. As part of the application process, the cashier asked Plaintiff for her telephone number and Plaintiff provided the number (925) 209-4306. *Sep. Stmt.* at ¶ 2. Plaintiff did not tell the cashier that the telephone number she had provided was a cell phone. *Sep. Stmt.* at ¶ 34. Plaintiff's application was immediately approved, and she received a temporary bar code, which she used to make purchases. *Sep. Stmt.* at ¶ 4. Eventually, Plaintiff received a permanent credit card in the mail, which she used to make additional purchases. *Sep. Stmt.* at ¶ 5.

Plaintiff made payments on her credit card account until late 2014, when she claims online access to her account was disabled. *Sep. Stmt.* at ¶ 6. At the time Plaintiff stopped making payments on her credit card account, she had an outstanding balance of approximately $350. *Sep. Stmt.* at ¶ 7. Plaintiff's credit card account remained overdue as of her January 16, 2016 deposition in this matter. *Sep. Stmt.* at ¶ 8.

Defendant engages in the collection of debts on behalf of creditors, including Synchrony. *Sep. Stmt.* at ¶ 9. Synchrony placed Plaintiff's credit card account with Defendant for collections on January 17, 2015. *Sep. Stmt.* at ¶ 10. All calls that Defendant placed to Plaintiff were for the sole purpose of collecting Plaintiff's debt on behalf of Synchrony. Defendant did not place any calls to Plaintiff for any other purpose, including advertisement or solicitation. *Sep. Stmt.* at ¶ 11.

Between January 17, 2015 and February 22, 2015, Defendant placed 134 calls to Plaintiff at the number (925) 209-4306. *Sep. Stmt.* at ¶ 12. All calls from Defendant to Plaintiff were placed between 8:00 a.m. and 6:30 p.m. Pacific Time.[1] *Sep. Stmt.* at ¶ 13. Defendant never placed more than five calls to Plaintiff in a single day. *Sep. Stmt.* at ¶ 15. Defendant allowed at least 90 minutes to elapse between each call that it placed to Plaintiff. *Sep. Stmt.* at ¶ 16. Defendant never intentionally left voicemails for Plaintiff. *Sep. Stmt.* at ¶ 17.[2]

The first 119 calls that Defendant placed to Plaintiff were not answered. *Sep. Stmt.* at ¶ 19. The first and only call from Defendant that Plaintiff answered was placed on February 13, 2015 at approximately 4:16 p.m. Pacific Time. *Sep. Stmt.* at ¶ 20. During this call, Plaintiff expressly consented to receiving further calls from Defendant at the same telephone number. *Sep. Stmt.* at ¶ 21. However, the remaining 14 calls that Defendant placed to Plaintiff were not answered. *Sep. Stmt.* at ¶ 22. The last call from Defendant to Plaintiff was placed at approximately 11:33 a.m. Pacific Time on February 22, 2015. *Sep. Stmt.* at ¶ 23.

On February 22, 2015 at approximately 1:06 p.m. Pacific Time, Plaintiff called Defendant and agreed to a payment plan to bring her credit card account current. *Sep. Stmt.* at ¶ 24. On February 23, 2015 at approximately 1:06 p.m. Pacific Time, Plaintiff called Defendant and asked to modify the payment plan she had previously agreed to. *Sep. Stmt.* at ¶ 25. On February 25, 2015 at approximately 2:28 p.m. Pacific Time, Plaintiff called Defendant and asked to cancel the payment plan that she had previously agreed to. *Sep. Stmt.* at ¶ 26. During the February 25, 2015 call, Plaintiff asked for Defendant to stop calling her and Defendant's collections agent stated that the calls would cease. *Sep. Stmt.* at ¶ 27. There was no further contact between Defendant and Plaintiff until the commencement of this lawsuit. *Sep. Stmt.* at ¶ 28.

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[1] Plaintiff has resided in the Pacific Time Zone throughout the relevant period. *Sep. Stmt.* at ¶ 14.

[2] Defendant's dialing software uses a voice recognition algorithm to distinguish live people from answering machines. In the unlikely event that the algorithm mistakes an answering machine for a live person, a brief message may be left unintentionally. *Sep. Stmt.* at ¶ 18.

III. LEGAL STANDARD

A party may move for summary judgment in any action or proceeding where the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). The judgment sought by a motion for summary judgment "should be rendered if the pleadings, the discovery, and the disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c)(2). Summary judgment is properly granted to a defendant who shows either that plaintiff cannot establish one or more essential elements of his cause of action or that there is an affirmative defense that bars recovery. Fed. R. Civ. P. 56; *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986).

A moving defendant "is not required to conclusively negate an element of plaintiff s cause of action, but rather need only put forth evidence showing plaintiff does not possess, and cannot reasonably obtain, evidence necessary to establish the elements of the cause of action." *Celotex*., supra, 477 U.S. at 323. Once the burden shifts, "plaintiff must set forth facts sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex, supra*, 477 U.S. at 322. A "mere scintilla of evidence" is insufficient to "defeat a properly supported motion for summary judgment; instead, the nonmoving party must introduce some significant probative evidence tending to support the complaint." *Fazio v. City & County of San Francisco*, 125 F.3d 1328, 1331 (9th Cir. 1997).

In response to a summary judgment motion, "the plaintiff can no longer rest on such 'mere allegations' but must 'set forth' by affidavit or other evidence 'specific facts,' which for purposes of the summary judgment motion will be taken to be true." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). "[U]ncorroborated and self-serving testimony or declarations, without more, will not create a genuine issue of material fact precluding summary judgment." *Mann v. GTCR Golder Rauner, L.L.C.*, 483 F.Supp.2d 884, 890 (D. Ariz. 2007) (citing *Dubois v. Ass'n Apart. Owners 2987 Kalakaua*, 453 F.3d 1175, 1180 (9th Cir. 2006)).

Rule 56(a) explicitly provides that a party "may move for summary judgment identifying ... the part of each claim or defense ... on which summary judgment is sought." This language was added to the rule in 2010 to make clear that summary judgment may be requested not only as to an entire case, or as to a complete claim or defense, but also as to parts of claims or defenses. Fed. R. Civ. P. 56, Advisory Committee Note of 2010 ("The first sentence [of subdivision (a)] is added to make clear at the beginning that summary judgment may be requested ...as to ... part of a claim or defense."). "The standards and procedures for granting partial summary judgment, also known as summary adjudication, are the same as those for summary judgment." *Mora v. Chem-Tronics, Inc.*, 16 F.Supp.2d 1192, 1200 (S.D. Cal. 1998).

IV. ARGUMENT

Plaintiff's Complaint asserts four claims for relief: (1) Violation of the FDCPA; (2) Violation of California's Rosenthal Act; (3) Violation of the TCPA; and (4) Invasion of Privacy. For the reasons set forth below, Defendant is entitled to judgment as a matter of law on each of these claims.

A. Defendant Is Entitled to Judgment as a Matter of Law on Plaintiff's Claim for Violation of the FDCPA

1. Sections 1692d and 1692d(5) of the FDCPA

Plaintiff alleges that Defendant's calls to her violated Sections 1692d and 1692d(5) of the FDCPA. *Complaint* at ¶¶ 21(a), 21(b). Section 1692d prohibits debt collectors from engaging in "any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of any debt." 15 U.S.C. § 1692d. The statute includes a non-exhaustive list of conduct that constitutes harassment, oppression or abuse, including "[c]ausing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number." 15 U.S.C. § 1692d(5).

"Whether there is actionable harassment or annoyance turns not only on the volume of calls made, but also on the pattern of calls." *Arteaga v. Asset Acceptance, LLC, 7*33 F.Supp.2d 1218, 1227 (E.D. Cal. 2010). Court opinions differ, however, as to the amount or pattern of calls sufficient to raise a triable issue of fact regarding the intent to annoy, harass, or oppress. *See Krapf v. Nationwide Credit Inc.*, 2010 WL 2025323, *3-4 (C.D. Cal. May 21, 2010). Although there is no bright-line rule, certain conduct generally is found to either constitute harassment, or raise an issue of fact as to whether the conduct constitutes harassment, while other conduct fails to establish harassment as a matter of law.

For instance, a debt collector may be found to harass a debtor by continually calling the debtor after the debtor has requested that the debt collector cease and desist communication. *See Fox v. Citicorp Credit Servs., Inc.*, 15 F.3d 1507, 1516–17 (9th Cir. 1994). Similarly, a debt collector may harass a debtor by immediately recalling a debtor after a debtor has hung up the telephone or calling the debtor at his or her place of employment. *See Kuhn v. Account Control Technology, Inc.*, 865 F.Supp. 1443, 1453 (Dist. Nev. 1994). Harassment may also be inferred where a debt collector's agents fail to identify themselves when calling a debtor. *See Fausto v. Credigy Services Corp.*, 598 F.Supp.2d 1049 (N.D. Cal. 2009).

By contrast, some conduct does not constitute harassment as a matter of law. *See, e.g., Arteaga, supra,* 733 F.Supp.2d 1218 at1229 (finding no harassment where debt collector called daily or more often than daily, but did not engage in "egregious" behavior, such as continuing to call after being asked to stop). In *Tucker v. CBE Group, Inc.*, 710 F.Supp.2d 1301 (M.D. Fla. 2010), the court granted summary judgment in favor of the defendant debt collector that had repeatedly called the phone of the plaintiff debtor's father and left voice messages intended for the debtor. The debt collector made a total of 57 calls and up to seven calls in one day, and left a total of six identical voice messages for debtor, but never actually reached the debtor. *Id.* at 1303. Finding no harassment under Section 1692d(5), the court held that,

> While the number of calls made during the relevant time period does seem somewhat high, [the debt collector] only left a total of six messages, made no more than seven calls in a single day, and did not call back the same day after leaving a message. The evidence demonstrates that [the debt collector] placed each of its telephone calls with an intent to reach [the debtor] rather than an intent to harass.

Id. at 1305.

Carman v. CBE Group, Inc., 782 F.Supp.2d 1223 (D. Kan. 2011) is also instructive. In *Carman*, the defendant debt collector "called plaintiff's home number 0-4 times a day and called her work number 0-3 times a day, for a total of 149 calls to plaintiff during a two month period," but only made contact with the plaintiff debtor once. *Id.* at 1227. The court granted the debt collector's motion for summary judgment, concluding that "there is no evidence of an unacceptable pattern of calls" and that "[t]he record is lacking of any indicia of the type of egregious conduct raising triable issues of fact when coupled with a high call volume." *Id.* at 1232. In granting CBE's summary judgment motion, the court pointed out that "even 'daily' calls, unaccompanied by other egregious conduct," do not, as a matter of law, "evince an intent to annoy, abuse or harass." *Id.* at 1230-32.

In the instant case, no reasonable juror could conclude that Defendant intended to harass Plaintiff. The undisputed evidence shows that Defendant called Plaintiff a total of 134 times over a period of 37 days, or an average of 3.6 times per day. *Sep. Stmt.* at ¶ 12. Only one of these calls was ever answered by Plaintiff. *Sep. Stmt.* at ¶ 20. Defendant never called more than five times in a single day, and always waited at least 90 minutes between calls. *Sep. Stmt.* at ¶¶ 15, 16. All calls from Defendant to Plaintiff were placed between 8:00 a.m. and 6:30 p.m. in Plaintiff's local time zone. *Sep. Stmt.* at ¶¶ 13, 14. Defendant never intentionally left voicemails and, in each of the four instances in which Defendant's collections agents actually communicated with Plaintiff, they clearly identified themselves at the outset of the call. *Sep. Stmt.* at ¶ 17; *Call Transcripts* (*Lambie Decl.* at Exhibits 2-5). Moreover, as in *Tucker*, the vast majority of Defendant's calls—specifically, 119 of them—occurred before any actual contact had been made with Plaintiff. This indicates an intent to reach Plaintiff, rather than an intent to harass her. *Tucker, supra,* 710 F.Supp.2d at 1305. Most significantly, Defendant discontinued all efforts to contact Plaintiff after she asked for the calls to stop. *Sep. Stmt.* at ¶ 13.

These facts compel the conclusion that Defendant called Plaintiff for the sole purpose of collecting the underlying debt, and not with the intent to harass or annoy her. Such calls cannot serve as a basis for liability under Sections 1962d and 1962d(5) of the FDCPA. Since the Complaint identifies no basis for liability other than Defendant's calls, Defendant is therefore entitled to judgment as a matter of law on Plaintiff's claims under these provisions.

2. Section 1692f of the FDCPA

In addition to her claims under Sections 1692d and 1692d(5), Plaintiff alleges that Defendant violated Section 1692f of the FDCPA, which prohibits the use of "unfair or unconscionable means to collect or attempt to collect a debt." 15 U.S.C. § 1692f.[3] The statute follows this broad prohibition with a non-exhaustive list of eight practices that are to be deemed unfair or unconscionable:

[3] Plaintiff's Complaint actually cites "15 U.S.C. § 1692(f)," which is a nonexistent statute. Defendant therefore presumes that the parentheses were inadvertent and Plaintiff actually intended to reference 15 U.S.C. § 1692f.

(1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

(2) The acceptance by a debt collector from any person of a check or other payment instrument postdated by more than five days unless such person is notified in writing of the debt collector's intent to deposit such check or instrument not more than ten nor less than three business days prior to such deposit.

(3) The solicitation by a debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution.

(4) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.

(5) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.

(6) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if:

(A) there is no present right to possession of the property claimed as collateral through an enforceable security interest;

(B) there is no present intention to take possession of the property; or

(C) the property is exempt by law from such dispossession or disablement.

(7) Communicating with a consumer regarding a debt by post card.

(8) Using any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business.

15 U.S.C. § 1692f(1)-(8).

None of these enumerated practices are applicable to the factual allegations in Plaintiff's Complaint. Thus, Plaintiff's claim appears to be premised solely on the general prohibition against "unfair or unconscionable" conduct by debt collectors set forth in Section 1692f. However, Plaintiff does not allege that Defendant engaged in any unfair or unconscionable conduct other than placing telephone calls, which, as discussed above, are specifically regulated elsewhere in the FDCPA. Specific statutory provisions control over more general ones. *Corley v. United States*, 556 U.S. 303, 316 (2009). Therefore, Plaintiff's purported claim under Section 1692f does not create any separate or additional basis for liability against Defendant. Even if it did, there is no evidence whatsoever that Defendant did anything unfair, misleading, or otherwise unconscionable in connection with Plaintiff's account. Defendant simply placed calls to Plaintiff in an effort to collect a debt that Plaintiff admittedly owes. *Sep. Stmt.* at ¶ 11. On all four occasions in which Defendant's agents actually communicated with Plaintiff, they clearly identified themselves and stated their purpose. *Sep. Stmt.* at ¶ 11. *Call Transcripts* (*Lambie Decl.* at Exhibits 2-5). In sum, Plaintiff's claim under Section 1692f of the not supported by any evidence and fails as a matter of law.

B. Defendant Is Entitled to Judgment as a Matter of Law on Plaintiff's Claim for Violation of California's Rosenthal Act

The Complaint's second claim for relief is for violation of the Rosenthal Act, a state law, codified in Section 1788 *et seq.* of the California Civil Code, which prohibits violations of certain provisions of the FDCPA. *Complaint* at ¶ 24. Liability under the Rosenthal Act is derivative of liability under the FDCPA. *Pasquale v. Law Offices of Nelson & Kennard*, 940 F.Supp.2d 1151, 1161 (N.D. Cal. 2013). A defendant entitled to summary judgment on FDCPA claims is likewise entitled to summary judgment on concurrent claims under the Rosenthal Act. *Id.* Therefore, Defendant respectfully requests summary judgment as to Plaintiff's claim under the Rosenthal Act for the same reasons set forth in the preceding section of this Motion.

C. Defendant Is Entitled to Judgment as a Matter of Law on Plaintiff's Claim for Violation of the TCPA

Plaintiff next alleges that Defendant violated the TCPA by placing calls to Plaintiff using an automatic telephone dialing system. *Complaint* at ¶ 30(a). The TCPA makes it unlawful for a person to call the cellular telephone number of any other person using an automatic telephone dialing system without the recipient's prior express consent. 47 U.S.C. § 227(b)(l)(A)(iii). Thus, a caller who has consent to call a cellular telephone number is expressly exempt from TCPA liability. 47 U.S.C § 227(b)(l)(A); *Robbins v. Coca-Cola-Co., 2013 WL 2252646, at *2 (S.D. Cal. May 22, 2013).*

When a consumer provides a cellular telephone number to a creditor as part of a credit card application, the provision of the number constitutes express consent for the creditor to contact the consumer about the debt. *In re Rules and Regs. Implementing the Telephone Consumer Protection Act of 1991*, 23 F.C.C. Rcd. 559, 564-65 (2008) ("*2008 FCC Ruling*"); *Chavez v. Advantage Grp.*, 2013 959 F.Supp.2d 1279, 1281 (D. Colo. 2013). Calls placed by a third-party debt collector on behalf of the creditor are treated as if the creditor itself placed the call. *2008 FCC Ruling* at 565. Furthermore, if there is a question as to whether express consent has been provided, the burden is on the creditor on whose behalf the call is made, and the creditor bears responsibility for violations of FCC rules for calls made on its behalf. *Id.*

Here, it is undisputed that Plaintiff provided her telephone number at the time she applied for the credit card that gave rise to the underlying debt. *Sep. Stmt.* at ¶ 2. Therefore, as a matter of law, she consented to being contacted at that number by Synchrony and collections companies acting on its behalf, including Defendant. *2008 FCC Ruling* at 565.

Plaintiff again gave her express consent to being contacted by Defendant using an automatic telephone dialing system during the February 13, 2015 call. *Sep. Stmt.* At ¶ 21. Specifically, Plaintiff engaged in the following exchange with one of Defendant's collections agents:

AGENT: Okay, I do want to thank you for that information. Okay, and the number that we contacted you at is a home number at 925-209-4306, is that correct?

MS. SCHWARTZ-EARP: It's a cell phone.

AGENT: Okay, it's a cell phone. Okay, we, Advanced Call Center Technologies, Synchrony Bank, or its suppliers may want to contact you at this number using an automatic telephone dialing system, or an artificial pre-recorded voice message, is that okay with you?

MS. SCHWARTZ-EARP: Mm-hmm.

Transcript of February 13, 2015 Call at 4:1-7 (*Lambie Decl.* at Exhibit 2).

Because Plaintiff repeatedly consented to being contacted concerning her credit card, she cannot prevail on her claim for violation of the TCPA, and Defendant is entitled to judgment thereon as a matter of law.

D. Defendant Is Entitled to Judgment as a Matter of Law on Plaintiff's Claim for Invasion of Privacy

Plaintiff's fourth and final claim is for invasion of privacy based on intrusion into Plaintiff's private affairs. *Complaint* at ¶ 30. This claim, like the remainder of Plaintiff's Complaint, is premised solely on the calls that Plaintiff placed to Defendant. *Complaint* at ¶ 30(a). An action for invasion of privacy by intrusion into private affair has two elements: (1) an intrusion into a private place, conversation, or matter (2) in a manner highly offensive to a reasonable person. *Smith v. Capital One Fin. Corp.*, 2012 WL 1669347, at *3 (N.D. Cal. May 11, 2012) (citing *Taus v. Loftus*, 40 Cal.4th 683, 725 (2007)). The intrusion must be intentional. *Smith*, *supra*, 2012 WL 1669347, at *3. "In addition, the plaintiff must have had an objectively reasonable expectation of seclusion or solitude in the place, conversation or data source." *Id.*

"'In the area of collection practices, a creditor has a qualified privilege to protect its economic interest.'" *Inzerillo v. Green Tree Servicing LLC*, 2014 WL 1347175, at *4 (N.D. Cal. Apr. 3, 2014) (quoting *Symonds v. Mercury Savings & Loan Assn.*, 225 Cal.App.3d 1458, 1468 (1990)). "When one accepts credit, the debtor impliedly consents for the creditor to take reasonable steps to pursue payment even though it may result in actual, though not actionable, invasion of privacy … In the debtor-creditor situation the right of a debtor to privacy is subject to the right of a creditor to take reasonable steps to collect the debt." *Bundren v. Superior Ct.*, 145 Cal.App.3d 784, 789 (1983). "The privilege 'may be lost if the creditor uses outrageous and unreasonable means in seeking payment,' but 'it is not enough that the creditor's behavior is rude or insolent.'" *Id.* (quoting *Symonds, supra,* 225 Cal.App.3d at 1469). "The 'applicable test is whether or not the creditor goes beyond all reasonable bounds of decency in attempting to collect the debt.'" *Id.* (quoting *Bundren*, *supra*, 145 Cal.App.3d at 789).

Here, no reasonable juror could conclude that Defendant's conduct exceeded all reasonable bounds of decency. As previously discussed, Plaintiff consented to being contacted by telephone when she provided her number while applying for the JCPenney-branded credit card that gave rise to the underlying debt. *Sep. Stmt.* at ¶ 2. Plaintiff renewed her consent during the February 13, 2015 call with one of Defendant's collections agents. *Sep. Stmt.* at ¶ 21. Furthermore, Plaintiff concedes that the account balance Defendant sought to collect was unpaid and remained outstanding throughout the relevant period. *Sep. Stmt.* at ¶¶ 7, 8. Defendant's calls did not continue after Plaintiff expressly asked for them to stop. *Sep. Stmt.* at ¶¶ 27, 28.

These undisputed facts plainly establish that Defendant did not invade Plaintiff's affairs in a manner highly offensive to a reasonable person. Therefore, Defendant is entitled to judgment as a matter of law on Plaintiff's claim for invasion of privacy.

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V. CONCLUSION

This case does not warrant expenditure of the time, cost, and judicial resources required for trial because there are no remaining material factual issues to be decided. As set forth above, Defendant attempted to collect a valid debt by placing a reasonable volume of calls to a number at which Plaintiff repeatedly consented to be contacted. The calls, placed during convenient hours and without intentionally leaving voicemails, constituted a legitimate attempt to reach Plaintiff, who did not respond until a vast majority of the calls had already been made. When plaintiff eventually asked for the calls to stop, they did immediately. As a matter of law, these facts do not give rise to liability for violations of the FDCPA, Rosenthal Act, TCPA, or for invasion of privacy. Therefore, Defendant respectfully requests summary judgment as to Plaintiff's entire Complaint or, in the alternative, partial summary judgment as to each claim for relief asserted therein.

Dated: February 11, 2016

MURPHY, PEARSON, BRADLEY & FEENEY

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